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NCLA Urges AZ District Court to Reverse Tentative Ruling Against Body Camera Co.

Amicus Brief in Support of Axon Enterprise, Inc. v. Federal Trade Commission, et al.

Washington, DC (March 31, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights organization filed an [amicus curiae](#) brief in the U.S. District Court for the District of Arizona in support of *Axon Enterprise Inc.* in the body camera company’s fight to keep its constitutional claims against the U.S. Federal Trade Commission (FTC) in federal court. NCLA’s brief solely addresses the “Tentative Ruling” issued by the Court, which concluded that federal courts do not have jurisdiction to evaluate a facial challenge brought under the U.S. Constitution.

On March 10, 2020, the Court issued a Tentative Ruling stating that the case should be dismissed and that Axon should first have to exhaust FTC’s adjudicatory process. This decision by the court would mean Axon’s constitutional claims against the very legitimacy of the FTC and its Administrative Law Judges would remain unaddressed for years.

As NCLA has argued in its ongoing [Lucia](#), [Cochran](#), and [Gibson](#) cases against the U.S. Securities & Exchange Commission (SEC), defendants have a due process right not to endure hearings in front of constitutionally defective tribunals. The Supreme Court ruled as much in *Lucia v. SEC* in 2018. Axon Enterprise is trying to vindicate a similar right against FTC and to do so it is relying on rulings such as the preliminary injunction that NCLA obtained for client Michelle Cochran in the U.S. Court of Appeals for the Fifth Circuit.

The District of Arizona should retain jurisdiction to discharge its Article III powers and address these threshold issues going to the constitutional defects in the tribunal itself, which FTC has no authority to address and where delay would irreparably harm Axon.

A motion hearing is scheduled for Wednesday, April 1, 2020, before Judge Dominic W. Lanza of the U.S. District Court for the District of Arizona concerning the Court's subject matter jurisdiction. Due to the pandemic and the fact that some counsel in this case are not based in Arizona, it was reset as a telephonic hearing.

NCLA released the following statements:

“The FTC retains the power to put a company through the administrative ringer and then either force settlement or, if no settlement is forthcoming, drop the matter without ruling—avoiding the constitutional issues raised. We think it is vital that any American faced with an unconstitutionally constituted tribunal get a hearing before an impartial Article III judge rather than be subject to a process that is itself the injury, and then, years later,

maybe, get an appellate court ruling that you were right all along but you have suffered the injury with no means of redress.”

–**John J. Vecchione, Senior Litigation Counsel, NCLA**

“FTC complained to its own administrative law judge *after* the company had filed suit in federal court. FTC’s action, it now claims, prevents the federal court from deciding the constitutional issues presented by the company. Such procedural antics should not be able to strip the federal courts’ otherwise ‘unflagging obligation’ to adjudicate properly-presented constitutional questions.” –**Adi Dynar, Litigation Counsel, NCLA**

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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